IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1436 OF 2001

Bansi J. Jaising ..Petitioner

versus

State of Maharashtra & Anr. ..Respondents

Mr. S. A. Sawant i/b. B. K. Barve for the Petitioner.

Mrs. V. R. Bhosale, APP for the Respondents - State.

None for the Respondent No. 2.

CORAM : D. G. DESHPANDE, J.

DATE : 1ST AUGUST, 2006

P.C. :

1. Heard Advocate for the Petitioner and learned APP for the State. Nobody is present for the Respondent No. 2 i.e. neither the Respondent No.2 or his Advocate.

2. The respondent No.2 had initially filed a complaint under Section 138 of the Negotiable Instruments Act against the petitioner. Admittedly, prior to that he had given notice to the petitioner.

In reply to the said notice, petitioner contended that two cheques on the basis of which he has made his claim were misused by him and stolen by him.

3. While the criminal case under Section 138 of Negotiable Instruments Act was pending, petitioner made payment of Rs.75,000/-, that was received by respondent No. 2 and the respondent No.2 withdrew the case under Section 138 of the Negotiable Instruments Act. Thereafter, the respondent No. 2 filed complaint under Section 500 of I.P.C. i.e. about defamation and the basis of the complaint was the reply given by the petitioner wherein the petitioner has stated that the respondent No.2 had committed theft of the two cheques.

4. This petition is filed for quashing the proceedings under Section 500 of I.P.C. pending before the Metropolitan Magistrate 33rd Court, Ballard Pier, Mumbai, being C.C. No. 297/M of 2000 or 576/S/2001. This court earlier granted ad interim stay. Notices were ordered to be issued to the Respondent No. 2. Respondent No. 2 has been served as per the affidavit filed by the petitioner. There appears to be some strength in the contention

of the Counsel for the Petitioner that having received the payment of Rs.75,000/-, the respondent No. 2 is now not interested in prosecuting his case under Section 500 of I.P.C. Apart from that he states that he has raised a defence in reply to the notice under Section 138 of Negotiable Instruments Act. That notice was strictly addressed to the Respondent No.2. There was no publication as such. No communication to the outside world. The petitioner was an employer and the respondent No.2 was an employee, and, therefore, those allegations were made with reference to those facts.

5. In the aforesaid circumstances, petition is allowed in terms of prayer clause (b). Rule made absolute accordingly.

(D.G. DESHPANDE, J.)